PIEDMONT POWER & LIGHT COMPANY *v.* TOWN OF GRAHAM ET AL.

PASCHALL ET AL. *v.* TOWN OF GRAHAM ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

Nos. 684, 685. Motion to dismiss or affirm or place on the summary docket submitted April 19, 1920.—Decided May 17, 1920.

The proposition that a municipality, having granted to a company the right to use the streets for distributing electricity, would impair the rights of the grantee and deprive it of property without due process if it granted a like right to a rival company, is frivolous if the first grant is plainly non-exclusive; and an appeal from the District Court based on such claim must be dismissed for want of jurisdiction. P. 194.

Appeals dismissed.

THE cases are stated in the opinion.

Mr. Clyde R. Hoey, Mr. Charles W. Tillett, Mr. William P. Bynum, Mr. James S. Cook, Mr. Jacob A. Long and *Mr. Sidney S. Alderman*, for appellees, on the briefs in support of the motion.

Mr. James H. Bridgers, for appellants, on the briefs in opposition to the motion.

Memorandum opinion by direction of the court, by MR. JUSTICE CLARKE.

These are appeals direct from decrees of the District Court sustaining motions to dismiss complaints for the reason that they did not state facts sufficient to constitute a valid cause of action in equity. The cases involve the same facts differently stated by different complainants. The asserted warrant for the appeals is that action taken by the officials of the Town of Graham, North Carolina, if allowed to become effective, would result in violation of appellants' contract with that town and in depriving them of their property without due process of law, in violation of the Constitution of the United States.

Since the bill in No. 684 contains all of the elements of strength which the bill in No. 685 contains and lacks some of its elements of weakness, the disposition of the former will rule the latter.

In No. 684 the appellant, a corporation, averring that it is the owner of a franchise to use the streets of the Town of Graham for the distribution of electric current, prays that the officials of the town be restrained from certifying as lawfully passed an ordinance granting a like franchise to the defendant, the Mutual Power & Light Company, and that the company be enjoined from using the streets for such purpose.

The grant to the appellant is set out in full in the bill and plainly it is not one of exclusive rights in the streets. The attempt to derive an exclusive grant from the declaration, in the paragraph of the ordinance relating to the trimming of trees, that "said Town of Graham hereby warrants that it will, by its proper authorities, provide for the full and free use of its streets, lanes," etc., is fatuous and futile. Grants of rights and privileges by a State or municipality are strictly construed and whatever is not unequivocally granted is withheld,—nothing passes

by implication. *Knoxville Water Co.* v. *Knoxville*, 200 U. S. 22, 34; *Blair* v. *Chicago*, 201 U. S. 400, 471; *Mitchell* v. *Dakota Central Telephone Co.*, 246 U. S. 396, 412. The grant to appellant not being an exclusive one, the contention that competition in business, likely to result from a similar grant to another company, would be a violation of appellant's contract, or a taking of its property in violation of the Constitution of the United States is so plainly frivolous that the motion to dismiss for want of jurisdiction, filed in each case, must be sustained. *David Kaufman Sons Co.* v. *Smith*, 216 U. S. 610; *Toop* v. *Ulysses Land Co.*, 237 U. S. 580; *Sugarman* v. *United States*, 249 U. S. 182.

Dismissed.